

MEMORANDUM

Date: November 11, 2001

FOR: Olga Kebis

FROM: Meggan Engelke-Ros
Office of General Counsel for Environmental Compliance

SUBJECT: NWS Obligation to Provide Eyewash/Drenching Facilities at UPS Sites

I. OSHA

The Occupational Safety and Health Act (OSHA)¹, enacted into law in 1970, is the Federal Statute which addresses worker safety and health. OSHA by its terms does not apply to Federal agencies because it only applies to “employers” who have “employees” which by statutory definition excludes the Federal Government. Specifically, OSHA defines these terms as follows:

The term “employer” means a person engaged in a business affecting commerce who has employees, but does not include the United States . . .²

The term “employee” means an employee of an employer who is employed in a business of his employer which affects commerce.³

Although excluded from direct regulation by definition, Federal agencies are required, under OSHA, to provide their employees with “healthful and safe places and conditions of employment.”⁴ In

¹ 29 U.S.C. § 651 *et seq.*

² 29 U.S.C. § 652(5)

³ 29 U.S.C. § 652(5)

⁴ 29 U.S.C. § 668 (a)(1)

addition, Executive Order 12580 provides that Federal agencies must comply with OSHA standards unless the Secretary of Labor has approved an alternative standard.

II. National Weather Service Obligation to Provide Eyewash/Drenching Facilities at UPS Sites

NOAA/NWS Uninterruptible Power Supplies (UPSs) are currently using valve regulated lead acid batteries and may be categorized as battery charging facilities. The batteries being charged at these sites are not being opened and filled with electrolyte, but present some risk of explosion nonetheless. Presumably, there is also some risk of contact with electrolyte in the event of breakage.

There are no stand-alone battery-charging regulations under OSHA. Rather, regulations addressing battery charging facilities are contained within the regulations covering Powered Industrial Trucks⁵ and the regulations covering Construction.⁶ Both regulations contain requirements for separate, properly ventilated battery storage and charging installations.

In addition, the OSHA standards related to personal protective equipment (PPE) provide that:

The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.⁷

It would seem then that NOAA employees, facing a risk, albeit a low risk, of battery explosion and acid exposure, should be properly outfitted with protective clothing and eyewear.

Employers are also required to provide suitable facilities for quick drenching or flushing of the eyes and body where the eyes or body of any person may be exposed to injurious corrosive materials.⁸ This requirement was listed as a general requirement in the regulations covering batteries specifically, and was also included in the regulations on medical and first aid care. There is nothing to indicate that this requirement was intended to apply only to facilities where unsealed batteries are handled.

⁵ 29 C.F.R. § 1910.178 (g)(2)

⁶ 29 C.F.R. § 1926.441

⁷ 29 C.F.R. § 1910.133 (a)

⁸ 29 C.F.R. § 1910.151 (c); 29 C.F.R. § 1910.178 (g)(2); 29 C.F.R. § 1926.411 (a)(7)

At remote NWS sites, where there is no water supply, portable eyewash/body drenching would constitute a reasonable means of meeting this requirement.⁹ Each room where batteries are stored should have a separate eyewash station.¹⁰

⁹ The portable eyewashes which have been proposed have cartridges which are replaceable and which are capable of delivering fifteen minutes of eye flushing. ANSI Z358.1-1998.

¹⁰ 29 CFR Part 1910.151(c) requires that “where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided *within the work area* for immediate emergency use.” The OSHA standards are silent on what is meant by “within the work area.” In an interpretation letter dated, February 17, 1995, OSHA relied upon the American National Standard for Emergency Eyewash and Shower Equipment, ANSI Z358.1-1990. This standard was revised by ANSI Z358.1-1998, which requires eyewash units to be “in accessible locations that require no more than ten seconds to reach.” The standard further requires that the travel path be free of obstructions.